Supreme Court, U.S.
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# In The Supreme Court of the United States

**WALTER C. PRESSLEY,**
*Petitioner,*
**v.**
**UNITED STATES OF AMERICA,**
*Respondent.*

## Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

## PETITION FOR A WRIT OF CERTIORARI
with Appendix

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February, 2002

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## QUESTIONS PRESENTED FOR REVIEW

I. Did the panel of the Sixth Circuit Court of Appeals commit error by failing to find plain error when the trial court did not instruct the jury on the theory of multiple conspiracies?

II. Did the panel of the Sixth Circuit Court of Appeals commit error by failing to recognize that the trial court should have instructed the jury on the issue of withdrawal from the conspiracy?

## LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

Petitioner, Walter C. Pressley, is incarcerated serving a eighty-seven (87) month sentence. He is represented by retained counsel. Respondent is the Government.

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## OPINIONS BELOW

A Copy of the Unpublished Opinion of the Sixth Circuit Court of Appeals whose judgment is sought to be reviewed is attached hereto in the Appendix. (App. B-1 )

## STATEMENT OF JURISDICTION

This is an Appeal from the conviction and sentence of the Petitioner from the Middle District of Tennessee in criminal actions before the Honorable Todd J. Campbell, wherein the Petitioner was convicted on October 9, 1998. The Petitioner was sentenced to a term of 87 months on July 19, 1999.

Jurisdiction of this Court arises under 28 U.S.C. § 1291. Notice of Appeal was timely made and filed on July 28, 1999, pursuant to Rule 4(b) of the Federal Rules of Appellate Procedure. The Final Brief and Reply Brief of the Appellant were filed on September 22, 2000. On September 18, 2001, the United States Court of Appeals for the Sixth Circuit filed an Unpublished Opinion which affirmed Appellant Pressley's conviction and sentence. The Judgment of the Court of Appeals for the Sixth Circuit denying the Petition for Rehearing and Suggestion for Rehearing *En Banc* was entered on November 7, 2001. This Petition for Writ of Certiorari is filed within ninety (90) days of that date.

## CONSTITUTIONAL PROVISIONS INVOLVED

The following Constitutional Provision is involved in this case:

> *United States Constitution, Amendment V* provides:
> No person shall be...deprived of life,
> liberty or property without due process of law...

## STATEMENT OF THE CASE

In 1994, a complaint alleged that Appellant Walter Pressley and co-defendant Salvatore Stallone were selling unregistered shares of stock in American Steinwinter, Inc ("ASI"). The stock was personal stock of Stallone, not stock of ASI.

In 1992, Pressley and Stallone traveled to Germany and began discussions with Manfred Steinwinter of Munich, Germany and his partners about promoting and manufacturing a prototype long-distance trailer and truck. Steinwinter was the developer of the aforementioned prototype trailer-truck. The Appellant and Stallone signed an agreement with Steinwinter to promote and manufacture the trailer-truck in the United States. Stallone then established the following companies in Tennessee and Utah: American Steinwinter Truck Manufacturing, Inc. ("ASTM"), American Steinwinter Dealership Association, Inc., Minestar Inc., Diversified

Securities, Inc., Winner Motor Carrier Corporation of America, Inc., American Winner Cross Country Tour, and Diversified Leverage Corporation of America. Pressley Holdings, Inc. was established by the Appellant.

Thereafter, Pressley and Stallone acquired investors to provide funds which were to be used in the development, manufacturing, and promotion of the truck and trailer. The investors provided funds for the project during 1992, 1993, and 1994. The investors, many of whom were in North Carolina, were provided with stock certificates for the investments. During 1992 and 1993, the investors purchased stock. Over 200 people invested. Most of the money received was sent to one of four checking accounts. Most of the funds received from the investors were used for office rent and office upfitting. The Appellant's total compensation was $11,640.59, which came from the ASTM account.

During early 1993, the relationship between Pressley and Stallone ended. Stallone fired Pressley and, thereafter, Pressley hired a lawyer to bring a lawsuit against Stallone.

Sometime during 1994, Pressley and Stallone attempted to solicit funds from investors in New Mexico for an American tour of the Steinwinter truck and for the publication of Stallone's literary works. The pending FBI

investigation ended the solicitation. The prototype trailer-truck is in the possession of some North Carolina investors.

Appellant Pressley was convicted in United States District Court for the Middle District of Tennessee on October 9, 1998 for aiding and abetting wire fraud; mail fraud; conspiracy to commit wire and mail fraud; and money laundering. Sentencing occurred before the Honorable Todd J. Campbell on July 19, 1999. The Appellant was sentenced to 87 months imprisonment . a $950.00 assessment and was ordered to pay $681,002.73 in restitution.

Appellant Pressley gave timely Notice of Appeal. The Final Brief and Reply Brief of the Appellant were filed on September 22, 2000. On September 18, 2001, the United States Court of Appeals for the Sixth Circuit filed an Unpublished Opinion which affirmed Appellant Pressley's conviction and sentence. The denial of the Petitioner's Petition for Rehearing and Suggestion for Rehearing *En Banc* was entered on November 7, 2001.

## ARGUMENT

I. THE PANEL OF THE SIXTH CIRCUIT COURT OF APPEALS COMMITTED ERROR IN FAILING TO FIND PLAIN ERROR WHEN THE TRIAL COURT DID NOT INSTRUCT THE JURY ON THE THEORY OF MULTIPLE CONSPIRACIES.

This Court and every circuit court has recognized that where two conspiracies are alleged in one indictment, the court should instruct the jury on the theory of multiple conspiracies. *Kotteakos v. United States*, 378 U.S. 750, 66 S.Ct. 1239 (1946). In this case, the Court did not do so.

It is acknowledged that trial counsel did not request such an instruction. However, the trial judge as well as the Assistant United States Attorney acknowledged that issue did exist in this case. (App. B-4) The factual issue recognized by both the prosecution and the trial court should have been submitted to the jury for its resolution.

The failure to do so constituted plain error.

II. THE PANEL OF THE SIXTH CIRCUIT COURT OF APPEALS COMMITTED ERROR IN FAILING TO RECOGNIZE THAT THE TRIAL COURT SHOULD HAVE INSTRUCTED THE JURY ON THE ISSUE OF WITHDRAWAL FROM THE CONSPIRACY.

As the indictment clearly shows, this was a two-person conspiracy. The indictment did not allege a

conspiracy among these two members and "others both known and unknown" as the traditional conspiracy indictment alleges.

There was clear evidence of Pressley's withdrawal from this conspiracy. *See United States v. Gypsum Company*, 438 U.S. 422, 98 S.Ct. 2864 (1978). Pressley was fired by Stallone. Thereafter, Pressley brought a lawsuit against Stallone and became the assistant to the receiver to help in obtaining assets from Stallone's company. Pressley also contacted law enforcement officials to report Stallone's activities. It is submitted that there can be no stronger proof of withdrawal from a conspiracy than this evidence.

Although trial counsel did not request such an instruction concerning withdrawal from the conspiracy, the facts dictate that such an instruction should have been given.

The failure of the Sixth Circuit Court of Appeals to recognize plain error in this regard should cause this Court to grant this Writ of Certiorari.

## CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Petition for Writ of Certiorari be granted.

Respectfully submitted, this 5th day of February, 2002.

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Attorney for Petitioner PRESSLEY

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**99-6070**

**UNITED STATES COURT OF APPEALS**
**FOR THE SIXTH CIRCUIT**

| | | |
|---|---|---|
| **UNITED STATES OF AMERICA,** | ) | |
| ***Plaintiff-Appellee,*** | ) | |
| **v.** | ) | **ORDER** |
| | ) | |
| **WALTER PRESSLEY,** | ) | |
| ***Defendant-Appellant.*** | ) | |

**BEFORE: RYAN and COLE, Circuit Judges; and MARBLEY*, District Judge.**

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing *en banc,* the petition for rehearing has been referred to the original panel.

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*Hon. Algenon L. Marbley, United States District Judge for the Southern District of Ohio, sifting by designation.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

**ENTERED BY ORDER OF THE COURT**

/s/ Leonard Green
Leonard Green, Clerk

NOT RECOMMENDED FOR PUBLICATION

**Nos. 99-6070/6071**

**UNITED STATES COURT OF APPEALS**
**FOR THE SIXTH CIRCUIT**

**UNITED STATES OF AMERICA,**
*Plaintiff-Appellee,*

v.

**WALTER PRESSLEY;**
**and SALVATORE STALLONE,**
*Defendants-Appellants.*

**BEFORE: RYAN and COLE, Circuit Judges; and MARBLEY, District Judge.**

**RYAN, Circuit Judge.** The defendants, Walter Pressley and Salvatore Stallone, appeal their convictions and respective sentences for aiding and abetting wire fraud; mail fraud; conspiracy to commit wire and mail fraud; and money laundering. The principal issue in each appeal is whether the trial judge erred in failing to instruct the jury

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*The Honorable Algenon L. Marbley, United States District Judge for the Southern
District of Ohio, sitting by designation.

on the theory of multiple conspiracies. We conclude that he did not. We also conclude that the other issues the defendants raise are without merit, and we shall, therefore, affirm the convictions and sentences in both cases.

## I.

Pressley and Stallone entered into an agreement in 1992 with Malcolm Steinwinter, a German inventor, to manufacture a "revolutionary" tractor-trailer system Steinwinter invented, in which the tractor sits underneath the trailer. The defendants' responsibility was to raise the necessary funds to finance the project. After Stallone established a corporation called American Steinwinter, Inc. (ASI), he and Pressley began selling stock in ASI to prospective investors.

During 1992 and 1993, over 200 people throughout the United States, but mostly in North Carolina, invested in ASI stock. The defendants told prospects that their money would be used to help promote, manufacture, and develop the tractor-trailer, and to fund promotional tours for the vehicle in order to attract more investors. The defendants raised over $1 million dollars from investors. Pressley contends his compensation from the sale of the stock totaled only $11,640.59. Stallone used ASI funds to buy two Jaguars, one Porsche, and one BMW; to pay off a $15,000

settlement in a child support case; to pay for a vacation residence in Panama City, Florida; and to purchase boats totaling approximately $23,000.

The government does not dispute the defendants' claim that they had a disagreement in 1993, after which Stallone fired Pressley. After that, Pressley filed a lawsuit against Stallone to gain possession of the prototype Steinwinter truck. However, as early as June 1994, Pressley and Stallone acting together, were again soliciting funds to promote the Steinwinter truck, this time in New Mexico. An FBI investigation eventually led to the defendants' indictment.

Pressley and Stallone initially were charged in a 13-count indictment with aiding and abetting wire fraud; mail fraud; and conspiracy to commit wire and mail fraud. Superseding indictments were returned during the course of the case, ending with the fourth and final superseding indictment on February 19, 1998, charging the defendants with offenses detailed in 19 counts. Motions to sever the defendants for trial were denied, and after a trial lasting almost five weeks with nearly 100 witnesses, both defendants were convicted.

Pressley was sentenced to a total of 87 months' confinement, and Stallone, to a total of 63 months'

confinement. Each defendant was ordered to pay $681,002.73 in restitution.

Both defendants filed appeals.

## II.

Pressley and Stallone each now claim, for the first time, that the district court erred in failing to instruct the jury on the defendants' theory of multiple conspiracies. Both defendants concede that the standard of review for the issue is plain error because trial counsel did not request a multiple conspiracies instruction and did not object when none was given. Specifically, the defendants now argue that their agreements to solicit investors in North Carolina, and later, other investors in New Mexico, were separate and distinct conspiracies.

During the jury charge conference, the district court asked the attorneys for the defendants whether they were requesting the jury be charged on the question of separate or multiple conspiracies. In response, Pressley's attorney, after consulting with Stallone's attorney, told the judge:

> I don't think there will be any argument about there being two conspiracies. It looks like we would have to probably get into at least making it appear we were in more than

one. I don't think we will get into that.

The trial judge advised counsel that if their clients' positions changed, they should submit a proposed jury charge; neither did so.

Generally a party's failure to timely raise an issue operates as a waiver of that issue in subsequent proceedings. *United States v. Olano,* 507 U.S. 725, 732 (1993). Where an indictment alleges one conspiracy, as in this case, a defendant can prevail on appeal by showing that the "evidence can reasonably be construed only as supporting a finding of multiple conspiracies, [and] the resulting variance between the indictment and the proof [was] reversible error," prejudicing the defendant. *United States v. Warner,* 690 F.2d 545, 548-49 (6th Cir. 1982) (emphasis added).

This court may order a reversal if it concludes that the district court plainly erred in its decision not to give the multiple conspiracies instruction because the defendants' substantial rights were prejudicially affected. However, this court's authority to correct plain errors is permissive, not mandatory. *Olano,* 507 U.S. at 735-36. In *Johnson v. United States,* 520 U.S. 461 (1997), the Supreme Court held that the following elements are necessary to establish plain error: (1) there was an error; (2) the error must be plain; (3) the error must affect the defendants' substantial rights; and

(4) the error must seriously affect the fairness, integrity, or public reputation of judicial proceedings. *See Id.* at 467.

Because the defendants' counsel expressly declined to have the issue of multiple conspiracies presented to the jury, and because we are satisfied that the evidence cannot reasonably be construed as supporting *only* a finding of multiple conspiracies, we decline to review the alleged error.

**III.**

The defendants also argue that the evidence was insufficient to support their convictions for money laundering. The money laundering statute, 18 U.S.C. § 1956, provides in pertinent part:

> (a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity.
>
> (A)(i) with the intent to promote the carrying on of specified unlawful activity.

18 U.S.C. § 1956. Specifically, the defendants claim that the evidence showed only that the money received from investors was used for office upkeep and supplies, and not "to promote" an illegal activity or otherwise to perpetuate a fraud.

We review the jury's finding on this issue in a "light most favorable to the prosecution" in order to determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia,* 443 U.S. 307, 319 (1979). We conclude that there was sufficient evidence to support the money laundering convictions because the defendants knowingly deposited proceeds from the investors into bank accounts and expended those proceeds on various items, including an office from which their efforts to promote their fraudulent scheme were conducted.

## IV.

Pressley argues that the district court erred in failing to instruct the jury on the issue of his withdrawal from the conspiracy. As with the multiple conspiracies issue, Pressley acknowledges that his attorney advised the trial court that he did not intend to argue that Pressley was involved in the conspiracy and then withdrew. Again, according to Pressley, this court should find that the district

court's omission of the instruction constituted plain error, thus entitling him to a new trial.

As stated previously, this court has authority to correct plain errors, but is under no obligation to do so. *Olano,* 507 U.S. at 734. Because Pressley's counsel expressly waived this issue, we again decline to review the alleged error.

V.

Stallone contends that the district court erroneously admitted statements made by his coconspirator, Pressley, under what Stallone calls the "coconspirator exception" to the hearsay rule. Fed. R. Evid. 801(d)(2)(E). Under *General Electric Co. v. Joiner,* 522 U.S. 136, 141 (1997), this court must review the district court's hearsay evidentiary ruling under an abuse of discretion standard.

Federal Rule of Evidence 801 (d)(2)(E) excludes from the definition of hearsay a statement that is "offered against a party and is. . . a statement by a coconspirator of a party during the course and in furtherance of the conspiracy." The trial court may admit such a statement in evidence under Fed. R. Evid. 801(d)(2)(E) if it finds, by a preponderance of the evidence: (1) that a conspiracy existed; (2) that the defendant was a member of the conspiracy; and (3) that the coconspirator's statements were

made in the course of and in furtherance of the conspiracy. *United States v. Mack,* 159 F.3d 208, 215 (6th Cir. 1998). The district court may admit the challenged statements subject to the condition that the government later demonstrate that the requirements of the rule have been met. See *United States v. Barrett,* 933 F.2d 355, 358 (6th Cir. 1991).

The district court did not abuse its discretion in admitting Pressley's statements against Stallone. In his brief, Stallone argues only that the district court erred in admitting the statements because there "was not sufficient proof of a conspiracy" in the first place. Because we conclude that there was abundant evidence supporting the district court's preliminary finding of fact that a conspiracy existed, we hold that Pressley's statements, which related to the business venture with Stallone, were properly admitted under Fed. R. Evid. 801(d)(2)(E).

## VI.

Finally, Stallone argues that there was insufficient evidence to support his convictions for mail and wire fraud, and conspiracy. As stated before, this court must find that the evidence was sufficient if "after viewing the evidence in the light most favorable to the prosecution, any rational trier

of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson,* 443 U.S. at 319.

After reviewing the evidence, we are satisfied that this assignment of error is wholly meritless. There is abundant evidence of Stallone's guilt of all of the offenses for which he was convicted. Stallone made many false statements to investors, especially relating to the truck's specifications and the price of the ASI stock. There was ample evidence that the money from investors was used to perpetuate a fraud and that Pressley and Stallone conspired to perpetuate it.

**VII.**

Accordingly, we **AFFIRM** the district court's judgment in these cases.

**UNITED STATES DISTRICT COURT**
**Middle District of Tennessee**

**UNITED STATES OF AMERICA**
**v.**
**WALTER PRESSLEY**

**JUDGMENT IN A CRIMINAL CASE**
Case Number: 3:96-00099-001
Harold I. Bender
Defendant's Attorney

**THE DEFENDANT:**

___ pleaded guilty to count(s)_____

___ pleaded nolo contendere to count(s)_____ which was accepted by the court

_X_ was found guilty on count(s) One (1) through Nineteen (19) after a plea of not guilty.

| Title & Section | Nature of Offense | Date Offense Concluded | Count Numbers |
|---|---|---|---|
| 18 U.S.C. § 1343 | Wire Fraud | August 1994 | One (1) through Seven (7) |
| 18 U.S.C. § 1341 | Mail Fraud | August 1994 | Eight (8) through Twelve (12) |

| Title & Section | Nature of Offense | Date Offense Concluded | Count Numbers |
|---|---|---|---|
| 18 U.S.C. § 371 | Conspiracy to Commit Mail Fraud and Wire Fraud | August 1994 | Thirteen (13) |
| 18 U.S.C. § 2 | Aiding and abetting Money Laundering | August 1994 | Fourteen (14) through Nineteen (19) |

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

___ The defendant has been found not guilty on count(s)

___ Count(s)_____ (is) (are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

| | |
|---|---|
| Defendants Soc. Sec. No.: | 239-98-0094 |
| Date of Imposition of Judgment: | July 19, 1999 |
| Defendant's Date of Birth: | November 27. 1960 |
| Defendant's USM No.: | 1503975 |

/s/ Todd Campbell
Signature of Judicial Officer

Defendant's Address:

2310 Gessner Court
Kannapolis, NC 28083

Todd J. Campbell, U.S. District
Name &Title of Judicial Officer

Date: July 19, 1999

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of Seven (87) months total based on the following:

Counts One (1) to Thirteen (13): Sixty (60) months on each Count, concurrent with all Counts. Counts Fourteen (14) to Nineteen (19): Eighty-Seven (87) months on each Count, concurrent with all Counts.

All Counts are grouped pursuant to U.S.S.G. § 3D1.2(d).

_X_ The court makes the following recommendations to the Bureau of Prisons:

1. Defendant should be incarcerated in North Carolina, near his family, consistent with his security classification.

_X_ The defendant is remanded to the custody of the United States Marshal.

_X_ The defendant shall surrender to the United States Marshal for this district:

__ at _____ a.m./p.m. on _____.

__ as notified by the United States Marshal.

___ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

__ before 2 p.m. on __September 1, 1999_____.

__ as notified by the United States Marshal.

__ as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a total term of two (2) years .

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For *offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

X The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

The defendant shall not possess a firearm as defined in 18 U.S.C. § 921.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set
forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the Standard Conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional Special Conditions identified on the page titled Special Conditions.

**STANDARD CONDITIONS OF SUPERVISION**

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

## CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Schedule Of Payments page of this Judgment.

| | Assessment | Fine | Restitution |
|---|---|---|---|
| Totals: | $950.00 | $0.00 | $681,002.73 |

____ If applicable, restitution amount ordered pursuant to plea agreement..... $ _____

## FINE

The above fine includes costs of incarceration and/or supervision in the amount of $_____.

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). Payments ordered maybe subject to penalties for default and delinquency pursuant to 18 U.S.C. § 36 12(g).

___ The court has determined that the defendant does not have the ability to pay interest and it is ordered, pursuant to 18 U.S.C, 3612(f)(3) that:

___ The interest requirement is waived.
___ The interest requirement is modified as follows:

## RESTITUTION

The defendant shall pay interest on any restitution of more than $2,500, unless the restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(1). Payments ordered may be subject to penalties for default and delinquency pursuant 18 U.S.C. § 3612(g).

_X_ The court has determined that the defendant does not have the ability to pay interest and it is ordered, pursuant to 18 U.S.C. § 3612(f)(3), that:

_X_ The interest requirement is waived.

_X_ The interest requirement is modified as follows:

The determination of restitution is deferred in a case brought under Chapters 109A, 110, 11OA, and 113A of Title 18 for offenses committed on or after 09/13/1994, until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

_X_ The defendant shall make restitution for the benefit of the victims listed on Appendix A attached hereto jointly and severally with co-defendant Salvatore Stallone.

If the defendant makes a partial payment, each victim shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

| Name | ** Total Amount of Loss | Amount of Restitution Ordered | Priority Order or Percentage of Payment |
|---|---|---|---|
| SEE ATTACHED APPENDIX A | | | |
| Totals | $ 681,002.73 | $ 681.002.73 | |

** Findings for the total amount of losses are required under Chapters 109A, 110, 11OA, and 113A of Title 18 for offenses committed on or after September 13, 1994.

All criminal monetary penalty payments are to be made to Clerk, U.S. District Court, 800 U.S. Courthouse, Nashville, TN 37203.

## SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A X in full immediately; or

B __ $ _____ immediately, balance due (in accordance with C, D, or E); or

C __ not later than _____; or

D __ in installments to commence ____ days after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or

E __ in _____ (e.g., equal, weekly, monthly, quarterly) installments of $_____ over a period of _____years to commence _____ days after the date of this judgment.

Special instructions regarding the payment of criminal monetary penalties:

___ The defendant shall pay the cost of prosecution.

___ The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to Clerk, U.S. District Court, 800 U.S. Courthouse, Nashville, Tennessee 37203

## STATEMENT OF REASONS

X The court adopts the factual findings and guideline application in the presentence report.

**OR**

__ The court adopts the factual findings and guideline application in the presentence report except: See attached Rule 32(c)(1) Findings and Determinations Regarding Objections to Presentence Investigation Report.

**Guideline Range Determined by the Court:**

Total Offense Level: 28

Criminal History Category: II

Imprisonment Range: 87 to 108 months

Supervised Release Range: 2 to 3 years

Probation Range: N/A to _____ years

Fine Range: $ 15.000.00 to $ 1,059,804.00

X Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $ 681,002.73

__ Restitution is not ordered because of the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

__ For offenses that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

X Mandatory full restitution is ordered pursuant to 18 U.S.C. § 3663A(a)(1) and (c)(1) and § 3664(f)(1)(A).

__ Full restitution is ordered pursuant to 18 U.S.C. § 3663 and 3664(f)(1)(A).

__ Partial restitution is ordered for the following reason(s):

X The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

**OR**

__ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

**OR**

__ The sentence departs from the guideline range:

__ upon motion of the government, as a result of defendant's substantial assistance.

__ for the following specific reason(s):

## SPECIAL CONDITIONS

1. The Defendant is prohibited from possessing firearms or other dangerous weapons.

2. The Defendant shall submit all tax returns and financial information as required by the U.S. Probation Office.

3. The Defendant shall pay restitution of $681,002.73, jointly and severally with co-defendant Salvatore Stallone, to the United States District Court Clerk's Office, Eighth Floor, 801 Broadway, Nashville, Tennessee 37203, to be forwarded to the victims listed on Appendix A. Restitution is due immediately. No interest shall accrue.

4. If the Defendant is unable to secure gainful employment where his earnings can be verified in writing on an ongoing basis, at the direction of the U.S. Probation Office, he may be required to secure other employment.

5. The Defendant shall not work selling stock or fundraising.

6. The Defendant shall notify employers of his criminal history, in the discretion of the Probation Office.

| VICTIMS/ADDRESSES | | RESTITUTION AMOUNT |
|---|---|---|
| 1. | Laura Adams<br>4307 Creemore Drive<br>Charlotte, NC 28213 | $ 1,250.00 |
| 2. | Tanya Hinkle Annin<br>20215 Floral Lane<br>Cornelius, NC 28031 | $ 50.00 |
| 3. | David Bailey<br>1712 Lakemont Drive<br>Greensboro, NC 27410 | $ 500.00 |
| 4. | John Barnard<br>P.O. Box 1189<br>Statesville, NC 28677 | $ 1,000.00 |
| 5. | Bill Benfield<br>1735 Newton Drive<br>Statesville, NC 28677 | $ 10,000.00 |
| 6. | Ronnie L. Bescher<br>924 B. Naomi Street<br>Randleman, NC 27317 | $ 507.50 |
| 7. | Paul Boney<br>4542 West Belmut Circle<br>Florence, NC 29501 | $ 25,000.00 |

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|---|---|---|
| 8. | Wayne Boney<br>11010 County Road 116B<br>Woodland, CA 95776 | $ 1,422.60 |
| 9. | Craig Breedlove<br>8067 Racine Road<br>Pleasant Garden, NC 27313 | $ 2,000.00 |
| 10. | Mitchell Breedlove<br>8032 Racine Road<br>Pleasant Garden, NC 27313 | $160,000.00 |
| 11. | Sammy Brim<br>298 Athey Simmons Road<br>Mt. Airy, NC 27030 | $ 1,500.00 |
| 12. | Luther Brown<br>1214 Inwood View Drive<br>Sophia,NC 27350 | $ 1,000.00 |
| 13. | Mike Brown<br>10300 Whitehorn Dr.<br>Charlotte, NC 28277 | $ 5,500.00 |
| 14. | Dave Butner<br>100 Westhaven Circle<br>Winston-Salem, NC 27104 | $ 12,000.00 |

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|---|---|---|
| 15. | Thomas & Mary Butt<br>2196 Providence Church Road<br>Pleasant Garden, NC 27313 | $ 1,000.00 |
| 16. | William F. Campbell<br>1663 Mill Road<br>Richmond, VA 23231 | $ 528.60 |
| 17. | Ralph Carroll<br>121 Kingston Acres<br>Berea, KY 40403 | $ 2,000.00 |
| 18. | Paul L. Chenoweth<br>180 Lea Meadow Road<br>Lexington, NC 27295 | $ 10,000.00 |
| 19. | Ronald Clair<br>3521 Crescent Knoll Drive<br>Matthews, NC 28105 | $ 5,018.60 |
| 20. | Robert Scott Clontz<br>145 Cool Creek Lane<br>Mt. Ulla, NC 28125 | $ 1,500.00 |
| 21. | Linda Coltrane<br>3726 Watauga Drive<br>Greensboro, NC 27410 | $ 500.00 |

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|---|---|---|
| 22. | Steve Comet<br>277 James Farm<br>Statesville, NC 28677 | $ 1,000.00 |
| 23. | Anne P. Cox<br>2951 Oxford Road<br>Henderson, NC 27536 | $ 1,080.00 |
| 24. | James T. Damell<br>971 North Bridge Street<br>Elkin, NC 28621 | $ 3,625.00 |
| 25. | Betty Joe Davis<br>512 Leawood Drive<br>Greensboro, NC 27410 | $ 5,000.00 |
| 26. | Richard D. Davis<br>1141 Boulder Road<br>Yadkinville, NC 27055 | $ 2,000.00 |
| 27. | Roger F. Davis<br>512 Leawood Drive<br>Greensboro, NC 27410 | $ 5,000.00 |
| 28. | Richard Deem<br>5876 Poplar Lane<br>Pfaffiown, NC 27040 | $ 2,338.60 |

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|---|---|---|
| 29. | Normand L. Dessert<br>P.O. Box 292<br>Hiddenite,NC 28636 | $ 5,000.00 |
| 30. | Thomas W. Dickerson<br>335 Holland Drive<br>Statesville, NC 28677 | $ 5,000.00 |
| 31. | Charles Doster<br>6234 Candlewood Drive<br>Charlotte, NC 28210 | $ 5,000.00 |
| 32. | Wayne Dunham<br>5407 Brekenwood Road<br>Pleasant Garden, NC 27313 | $ 3,500.00 |
| 33. | John W. Edwards<br>293 Shady Grove Road<br>Eden, NC 27288-7653 | $ 500.00 |
| 34. | Scott Ervin<br>105 Renaissance Place<br>Statesville, NC 28625 | $ 22,800.00 |
| 35. | Larry M.Evers<br>2012 Sanderstown Road<br>Franklin, NC 28734 | $ 10,001.00 |

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|---|---|---|
| 36. | James H. Ferre<br>P.O. Box 2511<br>Asheboro, NC 27204 | $ 2,028.60 |
| 37. | Kenneth M. Graves<br>2133 West Front Street<br>Burlington, NC 27215 | $ 4,900.00 |
| 38. | Dewey C. & Jack Greene<br>4347-D Edith Lane<br>Greensboro, NC 27409 | $ 4,531.25 |
| 39. | Daniel Griffin<br>2468 Arcadia Drive<br>Acworth, GA 30101 | $ 5,800.00 |
| 40. | Phil T. Griffin<br>100 Coralie Drive<br>Summerville, SC 29483 | $ 4,531.25 |
| 41. | Joe J. Harris<br>4 Velma Drive<br>Taylors, SC 29687 | $ 5,018.60 |
| 42. | Robert Harris, Jr.<br>113 Robbins Street<br>Greensboro, NC 27406 | $ 5,000.00 |

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|---|---|---|
| 43. | Jeff Hayes<br>4280 Pollyfield<br>Seagrove,NC 27341 | $ 580.00 |
| 44. | Steve Heintz<br>1475 Old Mountain Road<br>Statesville, NC 28677 | $ 8,312.60 |
| 45. | William A. Heyer<br>9020 Huntsman Road<br>Kemersville, NC 27284 | $ 2,450.00 |
| 46. | Jim Hightower<br>6005 Suer Road<br>Greensboro, NC 27406 | $ 4,912.76 |
| 47. | Lee and Pat Hilliard<br>323 High Point Street<br>Randleman, NC 27317 | $ 18,083.00 |
| 48. | David Hinkle<br>1182 W. 4th Street<br>Winston-Salem, NC 27 101-3622 | $ 1,518.60 |
| 49. | Michael Raymond Hinkle<br>311 White Oak Drive<br>Cary,NC 27513 | $ 1,050.00 |

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|---|---|---|
| 50. | Rita R. Hinkle<br>14100 Montfort Drive #1134<br>Dallas, TX 75240 | $ 10,200.00 |
| 51. | Steven M. Hmiel<br>4108 Stansbury Lane<br>High Point, NC 27265 | $ 5,000.00 |
| 52. | Richard N. Hodges<br>1791 Ardmore Road<br>Winston-Salem, NC 27127 | $ 5,000.00 |
| 53. | James F. Houser, Jr.<br>2420 31st Avenue, P1, N.E.<br>Hickory, NC 28601 | $ 3,000.00 |
| 54. | Garland Jackson<br>4520 Sugarberry Dr., #715<br>Charlotte, NC 28269 | $ 300.00 |
| 55. | Mark Jackson<br>113 Ridgeview Drive<br>King, NC 27021 | $ 808.60 |
| 56. | Michael W. Jarrell<br>795 Turner Mountain Road<br>Mount Airy, NC 27030 | $ 1,458.00 |

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|---|---|---|
| 57. | Bernard Jaworowski<br>6951 Ada Ridge Drive<br>Ada, MI 49301 | $ 6,583.00 |
| 58. | Alliene H. Johnson<br>P. 0. Box 593<br>Burlington, NC 27216 | $ 4,980.50 |
| 59. | Edward Johnson<br>191 Baymount Drive<br>Statesville, NC 28625 | $ 5,000.00 |
| 60. | Charles R. Jones<br>179 Turnberry Lane<br>Mooresyille, NC 28115 | $ 770.00 |
| 61. | James E. Laughlin<br>2530 Heritage Circle<br>Statesville, NC 28625 | $ 8,000.00 |
| 62. | James Daryl Lewis<br>5808 McLeansville Road<br>McLeansville, NC 27301 | $ 5,000.00 |
| 63. | Joe Lewis<br>1409 Parker Place<br>Brentwood, TN 37027 | $ 7,175.00 |

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|---|---|---|
| 64. | Jeff Matheson<br>P.O. Box 1345<br>Troutman, NC 28166 | $ 2,000.00 |
| 65. | Rosa Mayberry<br>903 Linney's Mill Road<br>Union Grove, NC 28689 | $ 9,618.60 |
| 66. | Lawrence R. Mylan<br>750 Chestnut Street<br>Greensboro, NC 27405 | $ 586.30 |
| 67. | John Clark Myrick<br>387 Dogwood Trail<br>Lexington, NC 27295 | $ 18,125.00 |
| 68. | John S. Newton<br>32 Cherokee Road<br>Moultrie, GA 31768 | $ 4,531.25 |
| 69. | James William Nyborg, Jr.<br>8801 Bnarstone Lane<br>Waxhaw, NC 28173 | $ 11,489.06 |
| 70. | Anthony Pamsh<br>621 Providence Church Road<br>Randleman, NC 27317 | $ 2,400.00 |

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|---|---|---|
| 71. | Lawson & Margaret Parrish<br>10431 Randleman Road<br>Randleman, NC 27317 | $ 17,089.53 |
| 72. | Rodney Parrish<br>1308 Caudle Road<br>Randleman, NC 27317 | $ 2,000.00 |
| 73. | Wayne & Viola Parrish<br>621 Providence Church Road<br>Randleman, NC 27317 | $ 2,400.00 |
| 74. | Robert C. Peters<br>926 Iron Bridge Road<br>Woolwine, VA 24185 | $ 4,000.00 |
| 75. | Gary S.Pennell<br>145 Timberbrook Lane<br>Statesville, NC 28625 | $ 11,000.00 |
| 76. | John Potts<br>611 Nelly Green Lane<br>Statesville, NC 28625 | $ 3,000.00 |
| 77. | John Ratliff<br>P.O. Box 5751<br>Asheville, NC 28813 | $ 10,001.00 |

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|---|---|---|
| 78. | Mary E. Reeves<br>3201 Reid Avenue<br>Charlotte, NC 28208 | $ 5,000.00 |
| 79. | Billy G. Reynolds<br>9235 Robert Frost Lane<br>Charlotte, NC 28213 | $ 5,000.00 |
| 80. | Robert Ricketts<br>710 Colonial Drive<br>North Wilkesboro, NC 28659 | $ 18,125.00 |
| 81. | David W. Riddle<br>291 Sarvis Tree Lane<br>Thomasville, NC 27360 | $ 12,667.00 |
| 82. | Harold A. Servis<br>2100 Isaacks Lane, #5<br>Las Cruces, NM 88005 | $ 434.00 |
| 83. | Edward & Patricia Suer<br>568 Back Creek Road<br>Asheboro, NC 27203 | $ 2,766.23 |
| 84. | Wallace L. Sills, Jr.<br>2240 Providence Church Road<br>Pleasant Garden, NC 27313 | $ 1,000.00 |

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|---|---|---|
| 85. | Edward D. Smith<br>4547 Plainfield Road<br>Sophia, NC 27350 | $ 500.00 |
| 86. | Mike Smitherman<br>103 Dodson Woods Lane<br>Pilot Mountain, NC 27041 | $ 1,178.60 |
| 87. | Charles R. Spainhour<br>P.O. Box 2323<br>King, NC 27021 | $ 2,000.00 |
| 88. | Ruth H. Smith<br>391 McCollum Street<br>Randleman, NC 27317 | $ 500.00 |
| 89. | Louis R. Sposato<br>106 Huntingdon Drive<br>Pittsburgh, PA 15235 | $ 5,000.00 |
| 90. | James A. Strong<br>14 Vance Circle<br>Lexington, NC 27292 | $ 1,024.60 |
| 91. | Leonard R. Sugerman<br>3025 Fairway Drive<br>Las Cruces, NM 88011 | $ 1,000.00 |

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|---|---|---|
| 92. | Isutomu Suzuki<br>c/o Laughlin<br>2530 Heritage Circle<br>Statesville, NC 28625 | $ 2,018.60 |
| 93. | Ron Tabor<br>1968 Ebert Street<br>Winston-Salem, NC 27103 | $ 5,000.00 |
| 94. | Sam Teel, Jr.<br>16 Miller Road<br>Asheville, NC 28805 | $ 500.00 |
| 95. | Boyd E. Thomas<br>850 Monroe Avenue<br>Asheboro, NC 27203 | $ 1,018.60 |
| 96. | John J. Triplett, Jr.<br>1719 Neelley Road<br>Pleasant Garden, NC 27313 | $ 3,682.20 |
| 97. | John J. Triplett, Sr.<br>5500 Stonebridge Road<br>Pleasant Garden, NC 27313 | $ 500.00 |
| 98. | Harold & Clara Tuttle<br>Route 1, Box 182-H<br>Germanton, NC 27019 | $ 1,000.00 |

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|---|---|---|
| 99. | Gail Wailer<br>5601 Faye Drive<br>Greensboro, NC 27410 | $ 518.60 |
| 100. | Gregory V. Watson<br>141 Kingswood Drive<br>Statesville, NC 28625 | $ 5,028.60 |
| 101. | Gerald M.Ware<br>4414 Pomona Road<br>Dallas, TX 75209 | $ 12,606.30 |
| 102. | Lyndon W. White<br>355 W. Kivett Street<br>Asheboro, NC 27203 | $ 580.00 |
| 103. | Benjamin Williams<br>3813 Colorado Avenue<br>Durham, NC 27707 | $ 48,000.00 |

**Total:** $681,002.73

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF TENNESSEE**
**NASHVILLE DIVISION**

**UNITED STATES OF AMERICA**

**v.** **No. 3:96-00099-001**
**JUDGE CAMPBELL**

**WALTER PRESSLEY**

## RULE 32(c)(1) FINDINGS AND DETERMINATIONS REGARDING OBJECTIONS TO PRESENTENCE INVESTIGATION REPORT

Pursuant to Rule 32(c)(1) of the Federal Rules of Criminal Procedure, the Court makes the following independent findings and determinations, by a preponderance of the evidence, regarding the objections to the Presentence Investigation Report ("Report").

The Court adopts the findings and determinations it made at sentencing, as set forth in the transcript of the sentencing hearing, and supplements those findings and determinations as follows:

## I. Defendant's Objections

1. Defendant Pressley objects to paragraph 20 of the Report applying a two-level adjustment for obstruction of justice pursuant to U.S.S.G. § 3C1,1. The objection is overruled. Defendant Pressley threatened and attempted to intimidate and otherwise unlawfully influence Jochim Rudolphi, Manfred Steinwinter, and Scott Ervin.

2. Defendant Pressley objects to the Offense Level calculated in the Report at paragraphs 14 through 24 on the ground that the amount of funds reasonably foreseeable to him was less than $100,000 00. The objection is overruled. The total amount of money laundered was reasonably foreseeable to Defendant Pressley. Pressley was deeply involved in the crimes of conviction and was not a collateral participant. Pressley did the largest portion of the fraudulent stock sales and enjoyed the benefits of a significant portion of the monies laundered.

3. Defendant Pressley objects to paragraph 29 of the Report and the criminal history point assessed for unsupervised probation. The objection is sustained. The judgment was appealed and there is no competent evidence in the record of the disposition on appeal.

A copy of this document shall be filed with and attached to the Presentence Investigation Report and the Judgment.

It is so **ORDERED.**

/s/ Todd J. Campbell
TODD J. CAMPBELL
UNITED STATES DISTRICT COURT